

Our ref: ERC0347

7 September 2022

Mr Justyn Douglas
Blue Pacific Energy Pty Limited
Suite 4/36
Sunshine Beach Road
Noosa Heads, Qld, 4567

By email: jdouglas@roscommonanalytics.com

Dear Mr Douglas

Response to objection to the use of an expedited process for the rule change request on Amending the administered price cap

We refer to the objection from Blue Pacific Energy Pty Limited (Blue Pacific)¹ to the Australian Energy Market Commission (Commission) in relation to the use of an expedited process for the rule change on Amending the administered price cap.

The Commission has carefully considered Blue Pacific's objection in light of the relevant test for the use of the expedited process in the National Electricity Law. The Commission has decided that the reasons given Blue Pacific in the request for the Commission not to use the expedited process do not meet the criteria under the law for the Commission to switch to the standard rule making process, for the reasons set out in the Appendix to this letter.

The Commission notes that the extended timeframe for this rule includes a directions paper, proposed to be published on 29 September, with a two-week consultation period, following which a final determination will be published in mid November.

The Commission thanks Blue Pacific for your interest in this project and would welcome a submission from Blue Pacific to the issues raised in the directions paper.

Yours sincerely



Anna Collyer
Chair
Australian Energy Market Commission

¹ Blue Pacific Energy Trading Pty Limited, *Amending the administered price cap*, August 2022:

Appendix

Relevant provisions of the National Electricity Law

The AEMC's decision to use an expedited process for the rule change on *Amending the Administrative Price Cap* was on the basis that the rule change request was a request for an urgent rule. That is, a rule² relating to any matter or thing that, if not made as a matter of urgency, will result in that matter or thing imminently prejudicing or threatening—

- a) the effective operation or administration of the wholesale exchange operated and administered by AEMO; or
- b) the safety, security or reliability of the national electricity system.³

Under the National Electricity Law (the Law) the AEMC must not use the expedited process for a rule change if:

- (a) the AEMC receives a written request not to do so; and
- (b) the reasons set out in that request are not, in its opinion, misconceived or lacking in substance.

If the AEMC is of the opinion that the reasons given in a request not to use the expedited process are misconceived or lacking in substance, the AEMC must make a decision to that effect and give the person its reasons, in writing, for that decision without delay.⁴

The AEMC has come to this opinion, after considering the reasons in the Blue Pacific objection in the context of the test for an urgent rule. Our reasons are set out below, with reference to each of the reasons in the Blue Pacific objection. (The subheadings below reflect the main points in the objection.)

Imminent prejudice or threat⁵

Blue Pacific states that they do not consider the rule change request relates to a matter of imminent (i.e. impending or urgent) risk and that the rule change is not urgent because physical generation withholding did not take place around June/July 2022, financial mechanisms compensating generators worked as intended, and “the fundamental conditions that created the crisis have abated”. Blue Pacific goes on to state that the concurrent and unprecedented issues that created high price outcomes leading to market suspension have subsided and further reduce the urgency of the rule change (to the extent the rule is necessary at all).

Blue Pacific further notes the current subsisting circumstances that mean the rule is not urgent, which are very low baseload generation availability, very high coal prices and reduced coal availability, gas prices reaching record highs and Snowy Hydro's TUMUT 3 unit being constrained down due to downstream flooding. In relation to improvements to coal availability, Blue Pacific refers to a report published recently by Origin Energy in relation to forward coal contracting activities.

The Commission is of the opinion that this argument is misconceived and lacking in substance as threats to the security or reliability of the national electricity system cannot be predicated solely on whether events that are difficult to forecast are likely or not likely to occur in the near term. They also need to be assessed against the occurrence of unpredictable events leading to sustained high or volatile prices in the electricity market or fuel markets, to ensure the existing market settings are adequate to achieve secure and reliable operation of the system in the event the market breaches the cumulative price threshold (CPT) and the APC is applied.

³ National Electricity Law, section 87.

⁴ National Electricity Law, section 96(4).

⁵ Blue Pacific Energy Pty Limited pages 1 - 2

The Commission notes that the issue of the level of the APC relative to the cost of generation, and the appropriateness of the level of the APC, is still relevant to the effective operation of the market. It would appear, from recent events, that some participants may consider the current level of the APC may not, in certain circumstances, adequately compensate market participants' costs or provide incentives to continue to participate in the normal market dispatch process and that the application of the APC resulted in generators withdrawing capacity to manage their fuel resources and the threat to market security that prompted the market suspension.

The Commission also considers that the reference to "imminent" needs to be considered in context, namely the matter or thing "imminently prejudicing or threatening" the effective operation of the market or security of the national electricity system. The matter or thing in question is the level of the APC. If the level of the APC is insufficient then that is an existing (not merely imminent) prejudice or threat to the market and security of the national electricity system. The market price settings are designed to manage the risk of difficult to predict and unforeseen events occurring in the context of the security and reliability of the electricity system.

In relation to the conditions leading to the application of the APC in June '22, the Commission considers that there may be other conditions that could lead to the recurrence of a breach of the CPT and the application of the APC, particularly in circumstances where the APC may not be sufficient to compensate generators. These include events such as international events causing elevated fuel prices, a prolonged or unexpected heatwave in spring and summer months, interconnector outages or extended coal plant outages or failures.

Steps that should happen prior to the rule change process being initiated⁶

Blue Pacific asks in its objection that full generator compensation claims, including the administered pricing compensation, and the entire "Reviewable Incident Report from AEMO covering the June events" be made public before any Rule change process (urgent or otherwise) is initiated or continued to aid in full transparency.

The Commission is of the opinion that this reason is misconceived and lacking in substance as it does not address the issue of urgency. The Commission supports transparency and while information about the administered pricing compensation claims and the AEMO report are important to understanding the June events, it is not relevant to whether or not, if the rule was not made, it would result in an imminent prejudicing or threatening of the security and reliability of the national electricity system.

⁶ Blue Pacific Energy Trading page 2